

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FRANTZ MOLEON,

Plaintiff,

-against-

SP PLUS CORPORATION,

Defendant.

Case No. 21-cv-08813

**NOTICE OF REMOVAL**

Defendant SP Plus Corporation files this Notice of Removal, pursuant to 28 U.S.C. §§1331, 1441 and 1446, giving notice that it is removing this civil action to the United States District Court for the Southern District of New York. In support of this Notice of Removal, Defendant states the following:

**PROCEDURAL ALLEGATIONS**

1. On October 1, 2021, Plaintiff Frantz Moleon commenced an action in the Supreme Court of the State of New York, County of New York (Index No. 159010/2021) (the “State Court Action”) by filing a Summons and Verified Complaint. *See Exhibit A* (Summons and Verified Complaint with Jury Demand, dated October 1, 2021).

2. Plaintiff served his Summons and Verified Complaint on Defendant SP Plus’s agent for service of process on October 7, 2021.

3. On October 26, 2021, Plaintiff electronically filed his Verified Amended Complaint with Jury Demand (*See Exhibit B*). Plaintiff has not yet served the Verified Amended Complaint on Defendant.

4. In his Amended Complaint, Plaintiff asserts claims of discrimination and retaliation under the Americans with Disabilities Act, 42 U.S.C. §§ 12111, *et seq.* *See Exhibit B* at ¶¶ 1, 5, 7, 8, 46-61.

5. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b), within thirty days from the date on which Plaintiff served his Complaint asserting federal claims. Upon information and belief, no other process, pleading or order was filed in the State Court action. No orders have been signed by the state judge presiding over this action, and there are no pending motions.

### **GROUND FOR REMOVAL**

6. The Complaint in the State Court Action alleges, *inter alia*, that (i) “Defendant violated the ADA by subjecting Plaintiff to disparate treatment, a hostile work environment, and discriminatory treatment due to his disability and perceived disability” (*see id.* ¶ 50); (ii) “Plaintiff has been deprived of equal employment opportunities based upon a failure to accommodate in violation of the Americans with Disabilities Act 42 USC 12112” (*see id.* ¶ 55); (iii) “Plaintiff has been deprived of equal employment opportunities based upon retaliation in violation of the Americans with Disabilities Act 42 USC 12112” (*see id.* ¶ 58); and (iv) “Plaintiff has been deprived of [ ] equal employment opportunities based upon his disability, perceived disability, and retaliation in violation of the Americans with Disabilities Act 42 USC 12112” (*see id.* ¶ 61).

7. The district courts of the United States have original jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 12117(a).

8. Accordingly, this case is a civil action that may be removed to this Court pursuant to 28 U.S.C. §§ 1331, 1441 and 1446 because it is an action founded on a claim or right arising under the laws of the United States.

**VENUE**

9. This Notice of Removal is being filed in the United States District Court for the Southern District of New York, which is the federal court for the District and Division within which the State Court Action is pending, as required by 28 U.S.C. §§ 1441(a) and 1446(a).

**NOTICES**

10. A true and correct copy of this Notice of Removal will be forwarded for filing in the Supreme Court of the State of New York, County of Westchester. Attached as **Exhibit C** is a copy of the Notice to Clerk of the Supreme Court of the State of New York, County of New York of the Filing of the Notice of Removal, the original of which is being filed with the Clerk of the Supreme Court New York County as required by 28 U.S.C. § 1446(d)

11. Attached as **Exhibit D** is a true and correct copy of the Notice to Adverse Party of Filing of Notice of Removal, the original of which is being served on Plaintiff's counsel, as required by 28 U.S.C. § 1446(d).

12. The required filing fee of \$400.00 and an executed civil cover sheet accompany this Notice.

13. Defendant files this Notice of Removal solely for the purpose of removing this action to federal court and does not waive, and specifically reserves, any and all defenses, including without limitation, the legal sufficiency and timeliness of Plaintiff's claims.

**WHEREFORE**, Defendant requests that the United States District Court for the Southern District of New York assume jurisdiction over the above-captioned action and issue such further orders and processes as necessary to bring before it all parties necessary for the trial of this action.

Dated: October 28, 2021

LITTLER MENDELSON P.C.

By: /s/ Shawn Matthew Clark

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